

The Department does not consider the viewing and downloading of text and similar data over the Internet to be the transfer of tangible personal property. However, sales of canned software are taxable regardless of the means of delivery. See 86 Ill. Adm. Code 130.1935. (This is a PLR).

August 1, 2001

Dear Xxxxx:

This Private Letter Ruling, issued pursuant to 2 Ill. Adm. Code 1200 (which can be found at <http://www.revenue.state.il.us/legalinformation/regs/part1200>), is in response to your letter of July 3, 2001, and July 27, 2001. Review of your request for a Private Letter Ruling disclosed that all information described in paragraphs 1 through 8 of subsection (b) of Section 1200.110 appears to be contained in your request. This Private Letter Ruling will bind the Department only with respect to COMPANY for the issue or issues presented in this ruling. Issuance of this ruling is conditioned upon the understanding that neither COMPANY nor a related taxpayer is currently under audit or involved in litigation concerning the issues that are the subject of this ruling request.

In your letter, you have stated and made inquiry as follows:

We are requesting a ruling regarding the applicability of the Illinois sales and use tax to charges made for access to educational materials via the Internet. Since this resource is currently being introduced in select markets outside of Illinois, and will be available in Illinois in the future, we would like to clarify the application of the Illinois tax as soon as possible.

## STATEMENT OF FACTS

AAA. owns several educational companies. COMPANY, a subsidiary of AAA, is a for-profit educational institution tailored to the working adult. The COMPANY offers Bachelor and Master degree programs in many states. In the past, students in the programs were required to purchase physical textbooks and other class supplies. Handouts and Course Syllabuses were xeroxed and provided to the students during class.

COMPANY will begin a new program sometime in the second half of 2001 called TITLE. Each student enrolled in a class will be required to pay a fee for access, via the Internet, to E-text and other materials such as PowerPoint presentations, course modules, assignments, and web links to articles. The E-text will consist of the ability to view and download only specific chapters of a text or various texts at the discretion of COMPANY and the instructors. **Students will not be able to access full texts at any time.**

At this time, the access fee is estimated to be \$70 for undergraduate classes and \$84 for graduate classes. This access would replace the traditional hard cover text and class handouts. The student would have cumulative access to the course materials as long as they are enrolled at COMPANY. The only exception is the text update, which would be an additional charge since COMPANY must pay the publisher for these updates. The materials will be stored on servers located in CITY/STATE.

## **DISCUSSION**

Although Illinois imposes a Service Occupation Tax on persons engaged in the sale of services, the information provided by the COMPANY would not generally be taxable as a service unless it was catered on an individual level. In addition, Illinois imposes a Retailers' Occupation Tax on the sale of tangible personal property, however, due to the format of the information, we do not believe that the information provided is taxable as a tangible personal property according to Illinois General Information Letter ST 00-0294. Therefore, we believe that the entire access fee is non-taxable under Illinois law.

## **CONCLUSION**

In summary, we are not currently planning on collecting sales tax on the class access fees charged to the students by COMPANY. We would like your confirmation that this fee will not be subject to tax under Illinois law. Again, since we will be offering these products in Illinois in the very near future, we would appreciate an expedited response to this request.

If you have any questions, please call me.

In your letter of July 27, 2001, you have stated as follows:

The following is in response to your request that we provide supplemental information in connection with the private letter ruling previously requested on behalf of COMPANY.

- 1) The tax period at issue is calendar year 2002.
- 2) We are not aware of any audit or litigation that is pending with the Department.
- 3) To the best of our knowledge, the Department has not previously ruled on the same or a similar issue for us and we have not previously submitted the same or a similar issue to the Department.

Thank you for your time.

## **DEPARTMENT'S RESPONSE:**

Your letter ruling request states that the students of the COMPANY will, for a fee, be able to access text and other educational materials over the Internet as part of the corporation's educational programs.<sup>1</sup> The Department does not consider the viewing and downloading of text and similar data over the Internet to be the transfer of tangible personal property. Therefore, the providing of access to text and other educational materials over the Internet by the COMPANY as part of the corporation's educational programs are not subject to liability under the Retailers' Occupation Tax Act, Use Tax Act, Service Occupation Tax Act, or Service Use Tax Act.

We do want to caution you, however, that the transfer of any canned software (or update of canned software) is considered the transfer of tangible personal property and will be subject to Retailers' Occupation Tax and Use Tax liability. Sales of canned software are taxable regardless of the means of delivery. See subsection (a) of the enclosed copy of 86 Ill. Adm. Code 130.1935. For instance, the transfer or sale of canned computer software downloaded electronically would be taxable.

The facts upon which this ruling are based are subject to review by the Department during the course of any audit, investigation, or hearing and this ruling shall bind the Department only if the material facts as recited in this ruling are correct and complete. This ruling will cease to bind the Department if there is a pertinent change in statutory law, case law, rules or in the material facts recited in this ruling.

I hope this information is helpful. If you have questions regarding this Private Letter Ruling you may contact me at (217) 782-2844. If you have further questions related to the Illinois sales tax laws, please visit our website at [www.revenue.state.il.us](http://www.revenue.state.il.us) or contact the Department's Taxpayer Information Division at (217) 782-3336.

Very truly yours,

Terry D. Charlton  
Associate Counsel

TDC:msk  
Enc.

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<sup>1</sup> This letter ruling is issued under the understanding that no software is transferred to the students as part of this program.